HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1254 of 2003 (SS)

Harish Kumar vs. State of Uttaranchal & others

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 20th October 2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1254 of 2003 (SS)

Harish Kumar …….. Petitioner

versus

State of Uttaranchal & others ……. Respondents

Dated: 20th October 2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petition has prayed for a writ of certiorari quashing the interview held on 3.07.2002 in pursuance of the advertisement dated 16.06.2002.

Briefly stated the facts giving rise to the present writ petition are that the petitioner has passed the examination of Moallim-E-Urdu and has also passed B.Ed. in the year 2002 from M.P.J. Rohilkhand University, Bareilly.

The petitioner has stated that Moallim E-Urdu is equivalent to B.T.C. vide Government order dated 13.9.1994. He has contended that the candidates having the certificate of Moallim –E-Urdu have been appointed as Assistant Teachers in Primary schools. The

advertisement for appointment of Assistant Teachers was got published by the respondents on 16th June 2002 and in pursuance thereof, the petitioner has applied for the post of Assistant Teacher but his application was rejected by the respondent No.3 only on the ground that the petitioner was having only certificate of Moallim-E-Urdu and not of B.T.C.

The petitioner has contended that he made several representations to the respondent no. 3 but his representation has not been considered. Hence he has filed the present writ petition.

A perusal of Government Order dated 13.9.1994 annexure-2 to the writ petition shows that State of U.P. has recognized the Moallim –E-Urdu certificate equivalent to B.T.C. Urdu and in pursuance thereof the persons holding such certificates are entitled to be appointed against the vacancies of B.T.C. discipline in Urdu language.

The petitioner has also filed a copy of the judgment-dated 2.8.2003 passed by Hon'ble Mr. Justice Irshad Hussain in writ petition No.794 (S/B) of 2002, Azad Ahamad & 11 others vs. State of Uttaranchal and others. It has been mentioned in the said judgment as under:

"No doubt, by G.O. dated 11.08.1998 certificate which were recognized, except the certificates issued by institutions specified in this order. Jamia-E-Urdu do not find place among those institutions

and, therefore, the certificate Moallim-E-Urdu ceased to have recognition with effect from the date of the issuance of the said G.O. dated 11.08.1997."

His lordship has concluded his findings as under:

"For the above reasons only those petitioners who have obtained Moallim-E_Urdu certificate before 11.08.1997 will be entitled to proper relief in this petition. Since the candidates who were selected pursuant to advertisement dated 16.06.2002 issued by respondent tno.2 have not been impleaded as the respondents in this petition and, therefore, no relief in regard to the said advertisement is being granted to the petitioners.

The petition, therefore, succeed partly and a writ in the nature of mandamus directing and commanding the respondents to recognize the certificate of Moallim-E-Urdu equivalent to B.T.C.(Urdu) for the recruitment against the appropriate post of those petitioner who have obtained certificate prior to 11.08.1997."

No doubt in the instant case Mark-sheet of Moallim-E-Urdu was granted to the petitioner on 16th December 1998, but at the same time mark-sheet annexure-1 shows that petitioner has appeared in the course of Moallim-E-Urdu in the year 1997. Thus during the cut off date of i.e. 11.08.1997 the petitioner was either studying or had completed the course. Of course, any person has joined the certificate

course of Moallim –E-Urdu after 11.08.1997 i.e. the date of derecognition cannot take benefit of such course equivalent to B.T.C. but the persons who has completed the course or has joined the course before the cut off date of de-recognition cannot be deprived from its benefits.

In the similar case Suresh and others vs. State of Haryana and others, AIR 1987 SC 2027 the Apex Court has held as under:

"We are of the view that since at the time when the petitioners joined the course, it was recognised by the Govt. of Haryana and it was on the basis of this recognition that the petitioners joined the course, it would be unjust to tell the petitioners now that though at the time of their joining the course it was reorganized, yet they cannot be given the benefit of such recognition and the certificates obtained by them would be futile, because during the pendency of the course it was derecognised by the State Govt. on 9th January 1985. We would, therefore, allow the appeal and direct the State Govt. to recognize the certificates obtained by the petitioners and others similarly situate as a result of completing the certificate course in Shri Hanuman Yayayam Prasarak Mandal Amravati for the purpose of appointment as Physical Training Instructor in Govt. Schools in Haryana. Of course, if any person has joined the certificate course after 9th January, 1985 he would not be entitled to the benefit of this

order and any certificate obtained by him from the said Institute would be of no avail."

Thus in view of the aforesaid facts and circumstances, respondents are directed to consider the candidature of the petitioner treating him as equivalent to B.T.C. Urdu if the petitioner is otherwise eligible for consideration.

The authorities concerned shall also consider whether the petitioner is entitled for the same in view of the judgment of this Court in writ petition No. 794 (SB) of 2002. Further the eligibility criteria for admission to a course or educational qualification are matters to be considered by the appropriate authority, the same shall be considered by the authority concerned according to the rules and available vacancies in future.

Since selection process has already been completed, therefore, this order will not prejudice those persons who have already been selected and are working. However, the petitioner may be considered for any future vacancy.

The writ petition is, therefore, disposed of accordingly. No orders as to costs.

20.10.2003 **(Rajesh Tandon, J.)**
Dhyani